

ORDINANCE NO. 09-18()

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE II, BASIC REGULATIONS, AND ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, Article II, Basic Regulations, and Article III, District Regulations, are hereby amended and reordained as follows:

By Amending:

Sec. 3.1 Definitions
Sec. 10.2.1 By right
Sec. 11.3.1 By right uses
Sec. 12.2.1 By right
Sec. 13.2.1 By right
Sec. 14.2.1 By right
Sec. 15.2.1 By right
Sec. 16.2.1 By right
Sec. 17.2.1 By right
Sec. 18.2.1 By right
Sec. 19.3.1 By right
Sec. 20.3.1 By right
Sec. 20A.6 Permitted uses
Sec. 20B.2 Permitted uses
Sec. 22.2.1 By right
Sec. 23.2.1 By right
Sec. 24.2.1 By right
Sec. 27.2.1 By right
Sec. 28.2.1 By right

By Adding:

Sec. 5.1.46 Small wind turbines

Chapter 18. Zoning

Article I. General Regulations

Sec. 3.1 Definitions

...

Fall zone. A zone on the surface of the ground that is a circle whose center is the proposed or standing personal wireless service facility or small wind turbine (the “facility or turbine”), where the radius is measured from the outer surface of the facility’s or turbine’s pole or other vertical structure immediately above its foundation, and where the radius is: (i) for facilities, equal to the height of the facility; and (ii) for turbines, equal to the height of the turbine plus a distance of twenty (20) feet.

...

Historic district. The Southwest Mountains Rural Historic District, the Southern Albemarle Historic District,

the Proffit Historic District and the Batesville Historic District, all of which are listed on the Virginia Landmarks Register.

. . .

Small wind turbine. A wind energy conversion system used for the generation of power to support an authorized use on the property and all components of the system including, but not limited to, the tower, guy wires, wiring, rotors and turbine blades, generators and control systems.

Small wind turbine, Tier I. A small wind turbine within any zoning district but which is not within a historic district or within a ridge area and which complies with the requirements of subsection 5.1.46(b) without waiver or modification.

Small wind turbine, Tier II. A small wind turbine that does not qualify as a Tier I small wind turbine because it would be located within a historic district or within a ridge area or because the owner requests a waiver or modification of any requirement of subsection 5.1.46(b).

Article II. Basic Regulations

Sec. 5.1.46. Small wind turbines

The purpose of this section 5.1.46 is to authorize small wind turbines as an accessory use in order to promote renewable energy. Each small wind turbine shall be subject to following, as applicable:

- a. *Application for approval.* In conjunction with the submittal of a building permit application for a small wind turbine, the applicant shall submit the following information:
 1. A plat of the parcel showing the lot lines, the location of the proposed small wind turbine and the setbacks to the lot lines.
 2. Plans that show the total height of the proposed structure, including rotors or turbine blades and that show compliance with the building code.
 3. For Tier II small wind turbines, if a waiver or modification of any requirement of subsection 5.1.46(b) is requested, information addressing each of the findings stated in subsection 5.1(a).
- b. *Requirements.* Each small wind turbine shall be subject to the following:
 1. *Primary purpose.* The primary purpose of the small wind turbine shall be to support and provide power for one or more authorized uses of the property; provided that nothing herein shall prohibit the owner from connecting the small wind turbine to a public utility and selling surplus power to the utility.
 2. *Location.* Notwithstanding section 4.2.3.1 of this chapter, the small wind turbine may be located in an area on a lot other than a building site.
 3. *Setbacks.* The small wind turbine shall not be located closer in distance to any lot line than its fall zone. The agent may authorize a small wind turbine to be located closer to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners that is acceptable to the county attorney and that prohibits development on the portion of the abutting parcel sharing the common lot line that is within the small wind turbine's fall zone. If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other

document.

4. Height. The small wind turbine shall not exceed the maximum height permitted for structures within the applicable zoning district; provided that the commission may waive the maximum height permitted for small wind turbines.
5. Lighting. The small wind turbine shall have no lighting.
6. Collocation. The small wind turbine shall not have personal wireless service facilities collocated upon it.
7. Removal. The small wind turbine shall be disassembled and removed from the property within ninety (90) days after the date the use(s) to which it provides power is discontinued or its use to generate power is discontinued. If the agent determines at any time that surety is required to guarantee that the small wind turbine will be removed as required, the agent may require that the owner submit a certified check, a bond with surety, or a letter of credit, in an amount sufficient for, and conditioned upon, the removal of the small wind turbine. The type and form of the surety guarantee shall be to the satisfaction of the agent and the county attorney.

c. Tier I small wind turbines. The agent is authorized to review and approve Tier I small wind turbines. The agent shall act on the application before the building permit application or site plan for the small wind turbine is approved. Notwithstanding subsection 5.1, no requirement of subsection 5.1.46(b) may be waived or modified for a Tier I small wind turbine.

d. Tier II small wind turbines. The commission is authorized to review and approve Tier II small wind turbines. The commission shall act on the application before the building permit application or site plan for the small wind turbine is approved.

1. Notice. Notice of the commission's consideration of an application for a Tier II small wind turbine shall be sent by the agent to the owner of each lot abutting the lot on which the proposed Tier II small wind turbine will be located. The notice shall: (i) describe the nature of the Tier II small wind turbine, its proposed location on the lot and its proposed height; (ii) identify the historic district or ridge area in which the small wind turbine is proposed to be located, if applicable; (iii) describe each requested waiver or modification of any requirement of subsection 5.1.46(b); (iv) identify the appropriate county office where the complete Tier II small wind turbine application may be viewed; and (v) state the date, time and location where the commission will consider the application. The notice shall be mailed by first class mail or hand delivered at least ten (10) days prior to the commission meeting. Notice shall be mailed to the last known address of the owner and mailing the notice to the address shown on the current real estate tax assessment records of the county shall be deemed compliance with this requirement. The failure of an owner to receive the notice as provided herein shall not affect the validity of an approved Tier II small wind turbine and shall not be the basis for an appeal.
2. Review of requests for waivers or modifications. Requests for waivers or modifications shall be subject to the standards and procedures set forth in subsection 5.1, even if there is no pending subdivision plat or site plan, and the following:
 - a. Conditions. If the commission approves an application, it may impose reasonable conditions it deems necessary to protect the public health, safety or welfare.
 - b. Denial. If the commission denies an application, it shall identify which requirements were not satisfied and inform the applicant of what needs to be done to satisfy each requirement.

3. Historic districts or ridge areas. Requests for small wind turbines in a historic district or a ridge area shall be subject to the following:

- a. Standards. In considering an application for a small wind turbine within a historic district or a ridge area, the commission shall consider the following: (i) whether the small wind turbine would adversely impact any historic resources within the historic district; (ii) whether the small wind turbine would be backlit against a ridge line; (iii) whether the small wind turbine would adversely impact resources identified in the county's open space plan; (iv) the extent to which the small wind turbine is sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the small wind turbine; (v) if the small wind turbine would be visible from a state scenic river or a national park or national forest, regardless of whether the river, park or forest is adjacent thereto, the extent to which it is sited to minimize its visibility from the river, park or forest; and (vi) if the small wind turbine would be located on lands subject to a conservation easement or an open space easement, or adjacent to a conservation easement or open space easement, the extent to which it is sited to minimize its visibility from any resources specifically identified for protection in the deed of easement.
- b. Conditions. If the commission approves an application, it may impose reasonable conditions it deems necessary to protect the public health, safety or welfare.
- c. Denial. If the commission denies an application, it shall identify which requirements were not satisfied and inform the applicant of what needs to be done to satisfy each requirement.
- d. Appeal. The board of supervisors may consider an application for a small wind turbine facility only upon an appeal of the denial of the application by the commission. An appeal shall be submitted in writing in the office of the agent within ten (10) calendar days after the date of the denial by the commission. In considering an appeal, the board may affirm, reverse, or modify in whole or in part, the decision of the commission, and its decision shall be based upon the standards delineated in subsection 5.1.46(d)(3)(a).

Article III. District Regulations

Sec. 10.2.1 By right

~~The following uses shall be permitted in any RA district subject to the requirements and limitations of these regulations:~~ The following uses shall be permitted by right in the RA district, subject to the applicable requirements of this chapter:

...

25. Small wind turbines (reference 5.1.46)

Sec. 11.3.1 By right uses

The following uses shall be permitted by right in the MHD, subject to the applicable requirements of this chapter:

...

25. Small wind turbines (reference 5.1.46)

Sec. 12.2.1 By right

~~The following uses shall be permitted subject to requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the VR district, subject to the applicable requirements of this chapter:

...

17. Small wind turbines (reference 5.1.46)

Sec. 13.2.1 By right

~~The following uses shall be permitted subject to requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the R-1 district, subject to the applicable requirements of this chapter:

...

14. Small wind turbines (reference 5.1.46)

Sec. 14.2.1 By right

~~The following uses shall be permitted subject to requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the R-2 district, subject to the applicable requirements of this chapter:

...

14. Small wind turbines (reference 5.1.46)

Sec. 15.2.1 By right

~~The following uses shall be permitted subject to requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the R-4 district, subject to the applicable requirements of this chapter:

...

16. Small wind turbines (reference 5.1.46)

Sec. 16.2.1 By right

~~The following uses shall be permitted subject to the requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the R-6 district, subject to the applicable requirements of this chapter:

...

17. Small wind turbines (reference 5.1.46)

Sec. 17.2.1 By right

~~The following uses shall be permitted subject to the requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the R-10 district, subject to the applicable requirements of this chapter:

...

17. Small wind turbines (reference 5.1.46)

Sec. 18.2.1 By right

~~The following uses shall be permitted subject to the requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the R-15 district, subject to the applicable requirements of this chapter:

...

17. Small wind turbines (reference 5.1.46)

Sec. 19.3.1 By right

~~The following uses shall be permitted subject to the requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the PRD district, subject to the applicable requirements of this chapter:

...

13. Small wind turbines (reference 5.1.46)

Sec. 20.3.1 By right

~~The following uses shall be permitted subject to the requirements and limitations of this ordinance:~~ The following uses shall be permitted by right in the PUD district, subject to the applicable requirements of this chapter:

...

13. Small wind turbines (reference 5.1.46)

Sec. 20A.6 Permitted uses

The following uses shall be permitted in ~~an~~ the NMD district, subject to the regulations in this section and section 8, the approved application plan and code of development, and the accepted proffers:

- a. *By right uses.* The following uses are permitted by right if the use is expressly identified as a by right use in the code of development or if the use is permitted in a determination by the zoning administrator pursuant to subsection 8.5.5.2(c)(1):

...

10. Small wind turbines (reference 5.1.46)

Sec. 20B.2 Permitted uses

The following uses shall be permitted in the DCD, subject to the regulations in this section:

- F. *Accessory uses and structures.* Accessory uses and structures are permitted, including but not limited to: (i) home occupations, Class A and Class B (reference 5.2) for primary residential uses; (ii) storage buildings for primary residential and non-residential uses; (iii) outdoor performance areas for primary

cultural arts center uses; ~~and~~ (iv) prototype manufacturing for research and development uses; and (v) small wind turbines (reference 5.1.46).

Sec. 22.2.1 By right

The following uses shall be permitted in ~~any the~~ C-1 district, subject to the ~~requirements and limitations of these regulations~~ applicable requirements of this chapter. The zoning administrator, after consultation with the director of planning and other appropriate officials, may permit as a use by right, a use not specifically permitted; provided that such use shall be similar to uses permitted by right in general character and more specifically, similar in terms of locational requirements, operational characteristics, visual impact and traffic generation. Appeals from the zoning administrator's decision shall be as generally provided in section 34.0.

...

b. The following services and public establishments:

...

28. Small wind turbines (reference 5.1.46)

Sec. 23.2.1 By right

The following uses shall be permitted in ~~any the~~ CO district, subject to the ~~requirements and limitations of these regulations~~ applicable requirements of this chapter:

...

15. Small wind turbines (reference 5.1.46)

Sec. 24.2.1 By right

The following uses shall be permitted in ~~any the~~ HC district, subject to the ~~requirements and limitations of these regulations~~ applicable requirements of this chapter. The zoning administrator, after consultation with the director of planning and other appropriate officials, may permit, as a use by right, a use not specifically permitted; provided that such use shall be similar to uses permitted by right in general character, and more specifically, similar in terms of locational requirements, operational characteristics, visual impact and traffic generation. Appeals from the zoning administrator's decision shall be as generally provided in section 34.

...

47. Small wind turbines (reference 5.1.46)

Sec. 27.2.1 By right

Except as otherwise limited by section 27.2.2.10, the following uses shall be permitted by right in the LI district, subject to the applicable requirements of this chapter:

...

29. Small wind turbines (reference 5.1.46)

Sec. 28.2.1 By right

Except as otherwise limited by section 28.2.2.14, the following uses shall be permitted by right in the HI district, subject to the applicable requirements of this chapter:

. . .

25. Small wind turbines (reference 5.1.46)

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Boyd	_____	_____
Mr. Dorrier	_____	_____
Ms. Mallek	_____	_____
Mr. Rooker	_____	_____
Mr. Slutzky	_____	_____
Ms. Thomas	_____	_____